



Paper No. 9

MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON, DC 20006

In re Application of
Cox et al.
Application No. 10/035,657
Filed: October 26, 2001
Attorney Docket No. 8827.014.00-US

ON PETITION

COPY MAILED

JUN 18 2003

OFFICE OF PETITIONS

This decision concerns the June 4, 2003 petition under 37 CFR 1.137(b).

The petition is **GRANTED**.

The application upon filing included a declaration executed by 2 of the 5 named inventors. On February 15, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, giving Applicants an extendable 2-month period for filing a properly executed oath or declaration. The supplemental declaration filed on April 16, 2002, as pointed out in the May 9, 2002 "Notice of Incomplete Reply (Nonprovisional)", still lacked the signature of 1 joint-inventor. No further oath or declaration was filed on or before September 16, 2002 (Monday) and no extension of time under 37 CFR 1.136(a) was obtained prior to that date. The application became abandoned as of April 16, 2002.

The instant petition encloses a declaration, executed by the last inventor, as a supplement to the previous declarations, and the \$650 petition fee (small entity); and includes a statement that the entire delay in filing a proper declaration from the due date until the filing of a grantable §1.137(b) petition was unintentional. The petition is thus granted.

The application is now complete.

A \$65 surcharge for lacking an acceptable declaration upon filing of the application was already submitted on February 16, 2002. The \$65 surcharge enclosed with the instant petition is thus redundant and has been credited to Deposit Account No. 50-0911 as authorized in the petition.

Also submitted with the instant petition is a \$725 payment intended for a 4-month extension of time (small entity) for filing the instant petition. However, an extension of time under 37 CFR 1.136 may only be obtained prior to expiration of the maximum extendable reply period.¹ The request for extension of time submitted with the instant petition is not applicable, in that, it is filed subsequent to the maximum extendable reply period, i.e., subsequent to September 16, 2002. The fee has therefore been credited to the above deposit account as authorized.

The application file is being returned to the Office of Initial Patent examination for further processing, including issuance of a filing receipt. Upon completion of pre-examination, the file will be forwarded to the appropriate Technology Center for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

¹ See In re Application of S., 8 U.S.P.Q.2d 1630, 1631 (Comm'r Pats. 1988).